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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

SANTIAGO TREVIZO,

Defendant and Appellant.

2d Crim. No. B204187
(Super. Ct. No. 2005014221)
(Ventura County)

Santiago Trevizo appeals a judgment after his conviction of six counts of committing lewd acts on children (Pen. Code, § 288, subd. (a)) after his second trial; his first trial ended in a hung jury. The court imposed an aggregate prison sentence of 45 years to life based on consecutive 15-year-to-life terms on three counts and concurrent 15-year-to-life terms on the three remaining counts. We conclude, among other things, that: 1) substantial evidence supports the judgment; 2) the court did not err by admitting evidence that Trevizo possessed adult pornography; 3) Trevizo has not shown ineffective assistance of counsel; 4) the court properly instructed jurors not to consider sentencing or punishment in determining guilt or innocence; 5) the court did not err by imposing consecutive sentences; 6) Trevizo has not shown that the court based the sentence on unreliable hearsay in a probation report; 7) by imposing consecutive sentences, the trial judge did not contravene Trevizo's right to a jury trial; and 8) Trevizo's sentence does not constitute cruel and unusual punishment. We affirm.

FACTS

S.P. testified that she met Trevizo when she was seven years old. He touched her multiple times in "inappropriate" ways. In one incident, he "pushed [her] up against his truck and reached down [her] pants." On several occasions, Trevizo touched her "breast area and [her] vaginal area" over her clothing.

M.G. testified that when she was eight years old she often went to Trevizo's garage to see his pet iguanas. He touched her in inappropriate ways. On one occasion, he pushed her up against a wall, held her hands above her head, pressed his body against hers and kissed her on the neck. In three or four separate incidents, he put his hand on her buttocks and moved his hands up and down over that area.

K.K. testified she met Trevizo when she was 10 years old. She would often go to his garage. On two occasions, he touched her inappropriately by initially giving her a hug. She said he would then "move his hand down to my butt" and "just leave it there." In one of these incidents, she said she could feel the skin of his hand move down her back to the waistband of her panties. In the other, he pulled her onto his lap. He said, "Let me see you" and tried to lift up her shirt. K.K. testified that she believed that Trevizo wanted to see "[her] breasts," but she "pulled down his hand" and left. In another incident, Trevizo told her to go to a drawer and said "there is something in there." When she opened it, she saw a pornographic magazine.

Sheriff's Detective Denise Silva testified that Trevizo agreed to be interviewed. During questioning, he showed no signs of any physical discomfort. His answers were responsive, he was not disoriented and he never said that he was confused.

During the interview, Silva asked Trevizo whether he had "a sexual attraction" for K.K. He responded, "Yeah." He said he gave her buttocks "a little squeeze." She asked Trevizo whether touching K.K.'s buttocks was "a way for [him] just to kind of get a taste of it" but "not go too far." He answered, "Yeah probably." She asked whether he remembered "lifting [K.K.'s] shirt up." Trevizo responded, "Probably if I did, I mean, you know if I did I don't know . . . ." Silva: "Have you ever had a sexual attraction to boys?" Trevizo: "No." Silva: "Just the girls, young girls?" Trevizo:

"Yeah." She asked him whether he had given "pats on the butt" to S.P. and M.G. Trevizo said, "That's been quite a while I don't know to tell you the truth. I don't know if I did. I'm sorry about that." Silva: "[Be]cause you probably had the same desires, but back then for the--for the girls." Trevizo: "Probably . . . ."

Silva testified that after a search of Trevizo's personal belongings, police seized "adult pornographic magazines" and videos. One of the items was a calendar entitled "Lollipops." Silva described it as "a calendar depicting young naked women." K.K.'s first name is handwritten on the front of the calendar above a photograph of a naked young lady. During trial, the defense stipulated that Trevizo wrote K.K.'s first name there.

In the defense case, Trevizo testified that he was not sexually attracted to children. He had no sexual interest in S.P., M.G. or K.K. and he did not touch them in an inappropriate manner. In his interview with Detective Silva, he said that he was sexually attracted to young girls. But his answers did not reflect his true feelings because at that time he did not hear well, he was sick, dizzy and he thought the interview only involved pornography. He had repeatedly said he agreed with Detective Silva about his sexual attractions because he had trouble understanding English and "didn't understand what [Silva] was talking about." He later testified that he spoke English and Spanish and his proficiency in both languages "is about the same." Trevizo said he wrote K.K.'s first name on the Lollipops calendar because the face of the nude model depicted there reminded him of K.K. They both had "light-colored hair."

On cross-examination, the prosecutor asked, "[E]ven though these girls [in the Lollipops calendar] are presumably over 18, the idea is that they are portraying themselves as young girls, correct?" Trevizo: "Yeah. Young ladies." Trevizo said he was sexually attracted to the nude models depicted in the pornography, but not girls under 18. The prosecutor asked, "So did you touch [K.K.'s] butt?" Trevizo responded, "Yes. It was under the truck. [¶] . . . [¶] . . . I was under the truck and I was playing with her at the time."

The prosecutor requested the Lollipops calendar to be received into evidence. Trevizo's trial counsel said he had no objection.

DISCUSSION

1. Substantial Evidence

Trevizo contends that the judgment must be reversed because there is insufficient evidence that he lewdly touched the children for a sexual purpose. We disagree.

In deciding the sufficiency of the evidence, we draw all reasonable inferences from the record to support the judgment. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) We do not weigh the evidence or decide the credibility of the witnesses. (*Ibid.*)

Penal Code section 288, subdivision (a) provides that a felony is committed where any person "willfully and lewdly commits any lewd or lascivious act . . . upon or with the body, or any part or member thereof, of a child who is under the age of 14 years, with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of that person or the child . . . ." This statute "prohibits *all* forms of sexually motivated contact with an underage child." (*People v. Martinez* (1995) 11 Cal.4th 434, 444.) In drawing inferences on intent, the trier of fact may consider how the defendant touched the child and other evidence showing his or her sexual attraction to such victims. (*Id.* at p. 445; *People v. Memro* (1995) 11 Cal.4th 786, 865.)

From the testimony of S.P., M.G. and K.K., the jury could reasonably infer that Trevizo lewdly touched them with the intent to arouse his and their sexual desires. He touched S.P.'s breasts and her "vaginal area." He kissed M.G., rubbed her buttocks and pressed his body against hers. He squeezed K.K.'s buttocks and lifted her shirt. The jury could also reasonably infer that he deliberately exposed K.K. to pornography and that writing her name on the pornographic calendar showed his sexual interest for her. (*People v. Memro, supra,* 11 Cal.4th at pp. 864-865.) All the victims unequivocally testified that Trevizo touched them in an inappropriate way.

Trevizo's admissions to Detective Silva about his sexual attraction to K.K. and young girls were highly incriminating.

Trevizo contends that both S.P.'s and M.G.'s testimony were unreliable. He claims they delayed reporting the incidents, and their memories about these old events were suspect and subject to the suggestive influences of police, their peers, and their parents. But S.P. and M.G., who were respectively 14 and 15 years of age when they testified, were extensively cross-examined about the delays. Their ability to remember and their credibility were a matter for the trier of fact. (*People v. Ochoa, supra*, 6 Cal.4th at p. 1206.) Moreover, the jury could reasonably infer that their testimony was corroborated by admissions Trevizo made to Silva and by some of his trial testimony. During cross-examination, the prosecutor asked, "You admitted touching all the girls on their butts, correct?" Trevizo responded, "Yes." He later testified he touched them "close to the butt, but not in the butt" or on their hips. It was for the jury to decide Trevizo's credibility and which version of events was accurate. The evidence is sufficient.

2. Evidence about Trevizo's Possession of Adult Pornography

Trevizo contends that the court erred by admitting evidence about his possession of adult pornography. The Attorney General responds that Trevizo waived this issue because he did not object when the exhibits containing pornography were admitted into evidence. The Attorney General is correct. (*People v. Doolin* (2009) 45 Cal.4th 390, 433.) But, even on the merits, the result is the same.

In *People v. Memro*, *supra*, 11 Cal.4th 786, our Supreme Court held that evidence of a defendant's possession of sexually explicit photographs and other materials involving boys was properly admitted to show his intent to molest a boy. The court said that from this evidence, "the jury could infer that he had a sexual attraction to young boys and intended to act on that attraction." (*Id.* at p. 865.)

Trevizo claims *Memro* is distinguishable because there the defendant possessed child pornography, whereas here Trevizo possessed only adult pornography. But this distinction is not as clear as Trevizo suggests. In *Memro*, the

material admitted was not limited to children. The court also admitted pictures and sexually related material involving young adult men. (*People v. Memro, supra*, 11 Cal.4th at p. 864.) But, this fact aside, the result does not change.

The trial court is not required to automatically exclude evidence about a defendant's possession of adult pornography in cases involving the defendant's intent to commit a lewd act on a child. (*People v. Page* (2008) 44 Cal.4th 1, 40.) Adult pornography may have "less probative value" than child pornography in such cases. (*Ibid.*) But trial courts have discretion to weigh the probative value of this evidence based on the particular facts of each case. (*Id.* at p. 41, fn. 17.)

Here Trevizo has not shown grounds for reversal. A trier of fact could reasonably infer that adult pornography was connected to Trevizo's method of attempting to commit lewd acts on K.K. or to arouse her sexual curiosity. K.K. testified that he told her to go to a drawer and he said, "there is something in there." When she opened it, she saw a pornographic magazine. Jurors could reasonably infer from this evidence that he had a lewd intent because he intended to expose her to adult pornography. (*People v. Levesque* (1995) 35 Cal.App.4th 530, 535, 543 [circumstantial evidence of lewd intent shown, in part, by defendant's act of showing children an adult pornographic "Playboy" movie].)

Trevizo suggests that there was no connection between the adult pornography he possessed, such as the Lollipops calendar, and criminal intent. He notes that adult pornography, by itself, may have no relevance in cases involving lewd conduct with children.

But here the prosecution made an evidentiary link to show how it was connected to Trevizo's sexual interest in K.K. Trevizo admitted that he was sexually attracted to the naked young women in the pornography he possessed. He said he wrote K.K.'s first name on the Lollipops calendar above a photograph of a nude model. He also said the model reminded him of K.K. Trevizo's testimony linked K.K. to this pornography. From this evidence, a trier of fact could reasonably infer that Trevizo "had a sexual attraction to [K.K.] and intended to act on that attraction."

(*People v. Memro, supra*, 11 Cal.4th at p. 865.) But, even independent of this evidence, Trevizo confirmed his sexual attraction to K.K. by his statements to Silva.

3. Ineffective Assistance of Counsel

Trevizo claims that the subject matter of his possession of adult pornography was highly prejudicial and his trial counsel was ineffective for not objecting to this material. To establish ineffective assistance, Trevizo must show that trial counsel's performance was both deficient and prejudicial. (*Strickland v. Washington* (1984) 466 U.S. 668, 687.) Appellate courts give substantial deference to trial counsel's reasonable tactical decisions involving litigation strategy. (*People v. Ledesma* (2006) 39 Cal.4th 641, 734-735; *People v. Weaver* (2001) 26 Cal.4th 876, 925-926.) "'[C]ourts should not second-guess reasonable, if difficult, tactical decisions in the harsh light of hindsight.'" (*Weaver*, at p. 926.)

Here Trevizo has shown neither ineffective assistance nor prejudice. Counsel's decision not to object to the Lollipops calendar was deliberate and tactical. He knew how the prosecution intended to use it, but he reasonably could conclude that its admission could also support inferences favorable to the defense. A major part of the defense strategy was to advance the premise that Trevizo's possession of adult pornography showed his sexual attraction only to adult women. His trial counsel told jurors that child molesters possess child pornography and the absence of such material here showed that Trevizo had no sexual attraction to these young girls. He argued that this consequently established the lack of motive to commit lewd acts with these children. This strategy involved a logical method of attempting to refute a major element in the prosecution's case. That jurors disagreed with counsel's interpretation of the evidence does not mean that his performance or strategy was deficient.

4. Instructing the Jury on Punishment

Trevizo notes that the court gave a standard instruction that the jury must reach its verdict "without any consideration of punishment." But he claims it erred by not advising jurors of the "sentence he might receive" because they had the right to

know this information to render a verdict. But sentencing is a matter for the trial judge. "A defendant's possible punishment is not a proper matter for jury consideration." (*People v. Holt* (1984) 37 Cal.3d 436, 458.)

Trevizo claims that the jury should be given the power to nullify the long sentences mandated by law for felony sex offenses by refusing to convict where they believe the sentence is too severe. But a court should never encourage a jury to "nullify a law it finds unjust." (*People v. Williams* (2001) 25 Cal.4th 441, 462.) "A nullifying jury is essentially a lawless jury." (*Id.* at p. 463.) There was no error.

5. Imposing Consecutive Sentences

Trevizo contends that the court erred by not imposing six concurrent sentences for the six felony counts. He claims the court did not understand that it had the option of imposing concurrent sentences, and vacating the sentence is required because it did not make adequate findings. We disagree.

The trial court imposed consecutive 15-year-to-life terms on three counts and concurrent 15-year-to-life terms on the three remaining counts for an aggregate sentence of 45 years to life.

A. The Court's Knowledge of Sentencing Options

"We presume the court lawfully performed its duty in imposing sentence." (*People v. Burnett* (2004) 116 Cal.App.4th 257, 261.) Vacating a sentence is appropriate where the trial court mistakenly imposed consecutive sentences because it did not know it had the authority to sentence concurrently. (*People v. Rodriguez* (2005) 130 Cal.App.4th 1257, 1263.)

But that is not the case here. The trial court knew it could impose concurrent sentences because it imposed concurrent sentences on some of the counts. As the Attorney General notes, if the court believed it lacked the authority to impose any concurrent terms, it would have imposed six consecutive terms.

B. Sentencing Findings

Trevizo claims the court did not make adequate findings to indicate why it imposed consecutive sentences. The Attorney General argues that Trevizo waived

this issue by not requesting findings at the sentencing hearing. The Attorney General is correct. When the court imposed the consecutive terms, Trevizo did not request findings. He consequently waived this issue on appeal. (*People v. Scott* (1994) 9 Cal.4th 331, 353.) But, even on the merits, the result does not change.

"No reason need be stated on the record for directing that indeterminate terms run consecutively to one another." (*People v. Black* (2005) 35 Cal.4th 1238, 1262, fn. 17, overruled on other grounds in *Cunningham v. California* (2007) 549 U.S. 270.) But, even so, the court gave its reasons for its sentencing choice in responding to an argument made by defense counsel at the sentencing hearing. Trevizo's attorney said, "It's our position that whether it's one life term, three life terms, or six life terms, . . . any life term . . . would amount to cruel and unusual punishment . . . ." The court said, "[I]n this case the sentence is not cruel and unusual based upon the information that the Court has reviewed in the probation officer's report and the trial that the Court heard."

In the probation report, the probation officer said, "In making a prison recommendation, it is felt that incarcerating the defendant for the longest period of time allowed by law, will not only protect society [from] a dangerous sexual predator, but afford the victims and their families the opportunity to pursue counseling and begin the healing process." "The defendant's actions in the present matter are appalling and represent a community's worst nightmare. The defendant's selfish behavior has emotionally traumatized all of the victims and, in all probability, scarred multiple families including his own, for life."

The court's reference to the probation report in lieu of making specific findings was not error. (*People v. Black*, *supra*, 35 Cal.4th at p. 1262, fn. 17.) But, even had it erred, a remand is not required. In *People v. Sanchez* (1994) 23 Cal.App.4th 1680, 1688, the trial court did not give "any specific reason for its decision to impose consecutive sentences." But the Court of Appeal said, "[I]n view of the contents of the probation report, we find it improbable the result would have

been different had the court been reminded to state its reasons for consecutive sentencing." (*Ibid*.)

C. Abuse of Discretion

Trevizo contends the court abused its discretion by not imposing concurrent sentences on all counts. He suggests that the court did not consider mitigating factors or exercise any discretion. But it exercised its discretion in favor of Trevizo by imposing several concurrent sentences. It could have imposed six consecutive terms. Trevizo claims the court did not have "any reliable facts before it" to impose the sentence it selected. But the court said it relied on the evidence at trial. That provided a factual basis for the sentencing choice.

Moreover, the probation officer noted that, although Trevizo had no prior criminal history, he was being sentenced for molesting three victims. She said consecutive, rather than concurrent, sentencing should be imposed because: 1) the crimes were independent of each other, 2) they involved separate acts, and 3) they "were committed at different times, not so closely as to be indicative of a single period of aberrant behavior . . . ." Those three factors support consecutive sentencing. (*People v. Rodriguez*, *supra*, 130 Cal.App.4th at pp. 1262-1263.) Given the number of victims, the number of separate incidents, the vulnerability of the children, and the nature of the conduct, we conclude there was no abuse of discretion. (*Ibid.*; *People v. Bestelmeyer* (1985) 166 Cal.App.3d 520, 531-532.)

6. Considering Unreliable Hearsay in the Probation Report

Trevizo claims the court was influenced by unreliable hearsay in the probation report from four B. sisters who claimed Trevizo sexually abused them many years ago. They did not testify at Trevizo second trial. The trial court denied Trevizo's motion to delete that portion of the report. The court did not err.

"The sentencing court is authorized to consider a much broader range of material than that allowed at trial . . . ." (*People v. Lamb* (1999) 76 Cal.App.4th 664, 683.) The probation report may include hearsay and reliable unsworn statements from other victims who did not testify at trial in cases involving child molestation.

(*Ibid.*; *People v. Franco* (1986) 181 Cal.App.3d 342, 350-351; *People v. Zikorus* (1983) 150 Cal.App.3d 324, 334.)

Trevizo contests a portion of the report that summarizes the testimony of the four B. sisters who testified against Trevizo at his first trial, but were not witnesses at the second trial. The reliability of this information is greater than the type of unsworn letters probation officers typically receive from victims as it was derived from court proceedings where these witnesses are sworn and subject to cross-examination. In addition, Trevizo told Silva that he had a periodic problem of attraction to young girls that "goes off and on." In sentencing of a defendant convicted of child molestation, the defendant's history is a factor the court may consider. (*People v. Franco, supra,* 181 Cal.App.3d at pp. 350-351.)

Trevizo claims the court did not evaluate his current convictions and instead relied only on the portion of the probation report involving the B. sisters. But this is speculation. He has neither cited to the record to show that the court relied on this information to select the sentence (*People v. Bustamante* (1992) 7 Cal.App.4th 722, 726), nor did he request findings. On this silent record, we presume the court lawfully performed its sentencing duties by considering the most relevant information (*People v. Burnett*, *supra*, 116 Cal.App.4th at p. 261); and even if the B. sisters' material should have been deleted, "[i]t is nonetheless presumed that 'the court was not influenced by irrelevant matters in the probation report . . . ." (*People v. Welch* (1999) 20 Cal.4th 701, 775.)

Moreover, the court did not simply accept the probation report at face value. It made corrections to it where it deviated from the evidence at the second trial. This refutes the claim that it was only interested in the evidence from the first trial. At the hearing the prosecutor stressed that Trevizo's sentence should be based on his offenses against S.P., M.G. and K.K. She said, "The defendant's sentence is going to be because of *what he did in this case*." (Italics added.) Trevizo has not shown error.

7. Trial Judge's Constitutional Authority to Impose Consecutive Sentences

Trevizo claims that the trial court, sitting without a jury, may not impose consecutive sentences without violating his Sixth Amendment right to a jury trial.

But the United States Supreme Court has recently settled this issue by rejecting Trevizo's position. "The decision to impose sentences consecutively is not within the jury function . . . ." (*Oregon v. Ice* (2009) ___U.S.__ [129 S.Ct. 711, 717].) "[A] trial court's imposition of consecutive sentences does not violate a defendant's Sixth Amendment right to jury trial." (*People v. Black* (2007) 41 Cal.4th 799, 821.)

8. Cruel and Unusual Punishment

Trevizo contends that his sentence constitutes cruel and unusual punishment. We disagree. A sentence that is so grossly disproportionate that it "shocks the conscience and offends fundamental notions of human dignity" violates the California Constitution's prohibition against cruel and unusual punishment. (*People v. Cartwright* (1995) 39 Cal.App.4th 1123, 1136.)

Trevizo claims his offenses are relatively minor and the sentence is grossly disproportionate. We disagree. He was convicted of six felony counts of committing lewd acts upon children. The victims were particularly vulnerable and the crimes are very serious.

The sentence was substantially increased because of the consecutive sentences. But "we cannot say that the imposition of consecutive sentences for multiple sex offenses shocks the conscience . . . ." (*People v. Bestelmeyer*, *supra*, 166 Cal.App.3d at p. 531.) "[A]ppellate courts have held that lengthy sentences for multiple sex crimes do not constitute cruel or unusual punishment." (*Ibid.*; see *People v. Retanan* (2007) 154 Cal.App.4th 1219, 1231 [135-years-to-life sentence was not cruel or unusual punishment]; *People v. Estrada* (1997) 57 Cal.App.4th 1270, 1278-1282 [life sentences for sex offenders mandated by California's "One Strike" law do not constitute cruel and unusual punishment]; *People v. Cartwright*, *supra*, 39 Cal.App.4th at pp. 1132, 1134-1136 [375-years-to-life sentence was not cruel or

unusual]; *People v. Wallace* (1993) 14 Cal.App.4th 651, 666-667 [283-year sentence upheld].)

Trevizo claims the length of his prison term contravenes the Eighth Amendment because he has "no prior convictions." But in *Harmelin v. Michigan* (1991) 501 U.S. 957, 961, 994-995, the United States Supreme Court held that a sentence of life imprisonment without the possibility of parole for a defendant's first time felony conviction of possessing 672 grams of cocaine did not violate the Eighth Amendment.

Trevizo claims that Ninth Circuit authority demonstrates why his sentence is constitutionally disproportionate. Decisions of the lower federal courts may be persuasive, but we are not bound by them. (*People v. Zapien* (1993) 4 Cal.4th 929, 989.) Yet, even so, we have reviewed the recent line of Ninth Circuit cases that have ruled that certain life sentences under California's Three Strikes law violate the Eighth Amendment and we conclude that they are all distinguishable.

In *Ramirez v. Castro* (9th Cir. 2004) 365 F.3d 755, the Ninth Circuit held that a 25-year-to-life sentence under the Three Strikes law violated the Eighth Amendment because the "core conduct" of the third strike involved the defendant's act of shoplifting a $199 VCR. (*Id.* at p. 768.) It concluded that the sentence was constitutionally disproportionate because the triggering offense was a minor and passive economic crime and distinguishable from crimes against a person. The court also distinguished *Harmelin* by noting that "Ramirez's nonviolent shoplift did not 'threaten[] to cause grave harm to society . . . .'" (*Ibid.*)

In *Reyes v. Brown* (9th Cir. 2005) 399 F.3d 964, the court vacated a federal district court's dismissal of a habeas petition that had challenged a 26-years-to-life three strike sentence. The third strike involved falsifying a driver's license application. Reyes's cousin was illiterate and wanted a driver's license. To assist him, Reyes went to the DMV pretending to be the cousin. The Ninth Circuit noted that, even though this was a felony conviction, this offense is often prosecuted as a misdemeanor and "'is viewed by society as among the less serious offenses.'" (*Id.* at

p. 967, fn. 4.) The court emphasized that "Reyes' act of falsifying a driver's license application was not a crime targeted at another individual." (*Id.* at p. 967.)

More recently, in *Gonzalez v. Duncan* (9th Cir. 2008) 551 F.3d 875, the Ninth Circuit ruled that a 28-year-to-life sentence as a result of the third strike violated the Eighth Amendment. There the triggering strike was the defendant's failure to update his annual sex offender registration. The court stated that the sentence was grossly disproportionate for a "technical violation of a regulatory crime of omission." (*Id.* at p. 891.) It said the defendant's current conduct "does not demonstrate any recidivist tendency toward violent crime or sex offenses." (*Ibid.*)

But Trevizo's conduct involved multiple sex offenses and was far more serious than shoplifting, pretending to be a cousin to obtain a DMV license, or failing to renew a registration. Trevizo has not shown that the Ninth Circuit has ever ruled that a lengthy sentence contravened the Eighth Amendment where it was imposed for committing six felony counts of lewd conduct with children and involved three victims. The sentence is not constitutionally disproportionate. (*Ewing v. California* (2003) 538 U.S. 11, 22.)

We have reviewed Trevizo's remaining contentions and conclude that he has not shown reversible error.

The judgment is affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Edward F. Brodie, Judge

Superior Court County of Ventura

Maxine Weksler, under appointment by the Court of Appeal, for Defendant and Appellant.

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